

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2894

By Delegates Hanshaw (Mr. Speaker) and Skaff

[By Request of the Executive]

[Introduced January 20, 2023; Referred to the
Committee on Finance]

1 A BILL to amend the code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §11-13MM-1, §11-13MM-2, §11-13MM-3, §11-13MM-4, §11-13MM-5, and §11-
 3 13MM-6; all relating to authorizing a refundable tax credit, applied against personal income
 4 tax or corporation net income tax, as applicable, in the amount of property tax timely paid
 5 on Class A, Class B, Class G, Class H, Class T, Class V, and Class X motor vehicles, all-
 6 terrain vehicles and utility terrain vehicles during the income tax taxable year; designating
 7 a short title; providing definitions; providing for the application of tax credit; specifying
 8 refundable tax credit; specifying retroactive effect; providing for the treatment of credit
 9 upon transfer of eligible motor vehicle; and providing for an effective date.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 13MM. CAR AND ALL VEHICLE TAX ELIMINATION AND PROTECTION OF
 LOCAL GOVERNMENT ACT.**

§11-13MM-1. Short title.

1 This article shall be known and cited as the Car and All Vehicle Tax Elimination and
 2 Protection of Local Government Act.

§11-13MM-2. Definitions.

1 (a) General. -- When used in this article, or in the administration of this article, terms
 2 defined in subsection (b) of this section have the meanings ascribed to them by this section unless
 3 a different meaning is clearly required by the context in which the term is used.

4 (b) Terms defined. –

5 (1) “Ad valorem property tax” means and is limited to the West Virginia ad valorem property
 6 tax.

7 (2) “Eligible motor vehicle” means a motor vehicle on which the ad valorem property tax
 8 has been paid for the taxable year by the eligible taxpayer, and which is a motor vehicle as defined
 9 in this article.

10 (3) "Eligible taxpayer"

11 (A) "Eligible taxpayer" – Owned motor vehicles -- "Eligible taxpayer" means any person
12 who owns a motor vehicle for which the *ad valorem* property tax has been paid during the
13 corporation net income tax taxable year or the personal income tax taxable year, as applicable.
14 For purposes of this definition, ownership of a motor vehicle includes, ownership and possession
15 of a motor vehicle for which a title has been issued by the Division of Motor Vehicles to the eligible
16 taxpayer. For purposes of this definition, ownership of a motor vehicle also includes ownership and
17 possession of a motor vehicle, subject to a purchase financing arrangement whereby a financial
18 institution holds a lien on the motor vehicle, or for which ultimate issuance of title by the Division of
19 Motor Vehicles to the taxpayer, as owner of the motor vehicle, is contingent upon payment in full of
20 the purchase price of the motor vehicle pursuant to an installment payment financing
21 arrangement.

22 (B) "Eligible taxpayer" – Leased motor vehicles -- "Eligible taxpayer" also means and
23 includes any lessor of a motor vehicle, as herein defined, who owns a motor vehicle for which the
24 *ad valorem* property tax has been paid during the corporation net income tax taxable year or the
25 personal income tax taxable year, as applicable: *Provided*, That, the lessor shall pass on to the
26 lessee the value of the tax credit asserted by the lessor by causing a decreasing in the amount of
27 rent or lease payment payable by the lessee on the leased motor vehicle.

28 (C) "Eligible taxpayer" – Pass through entities -- "Eligible taxpayer" also means and
29 includes any owner, interest holder, partner or S corporation shareholder that derives conduit
30 income from a pass through entity.

31 (D) "Eligible taxpayer" – Prohibition for motor vehicle dealers -- "Eligible taxpayer" does not
32 mean or include any motor vehicle dealer, motor vehicle dealership, retailer or any business that
33 sells new or used motor vehicles at the retail level, other than a lessor of motor vehicles. In
34 circumstances where any such motor vehicle dealer, motor vehicle dealership, retailer or business
35 that sells new or used motor vehicles at the retail level in engaged in both retail sales of motor

36 vehicles, and leasing of motor vehicles as lessor, the tax credit authorized by this article may only
37 be asserted by such business based upon the *ad valorem* property tax paid on leased motor
38 vehicles, and only to the extent that the lessor has passed on, to the lessee, the value of the tax
39 credit asserted by the lessor by causing a decreasing in the amount of rent or lease payment
40 payable by the lessee on the leased motor vehicle. No credit may be asserted or applied by the
41 business based upon *ad valorem* property tax paid on motor vehicle retail inventories, not actively
42 leased to lessees. To the extent that motor vehicle retail inventories may be held as both motor
43 vehicle retail inventories, and as motor vehicles potentially subject to lease during the taxable
44 year, *ad valorem* property tax paid on such motor vehicles is excluded from eligibility for the tax
45 credit authorized by this article.

46 (4) "Flow-through entity," "conduit entity," or "pass through entity" means an S Corporation,
47 partnership, limited partnership, limited liability partnership, or limited liability company. The term
48 "flow-through entity," "conduit entity," or "pass through entity" includes a publicly traded partnership
49 as that term is defined in section 7704 of the Internal Revenue Code that has equity securities
50 registered with the Securities and Exchange Commission under section 12 of Title I of the
51 Securities Exchange Act of 1934, 15 USC §78I: *Provided*, That a publicly traded partnership as
52 defined in section 7704 of the Internal Revenue Code having equity securities registered with the
53 Securities and Exchange Commission under section 12 of Title I of the Securities Exchange Act of
54 1934, 15 USC §78I, and any other person or entity that is treated as a C corporation for federal
55 income tax purposes, shall be treated as a corporation taxable under §11-24-1 et seq. of this code
56 for purposes of this article.

57 (5) "Motor Vehicle" means the following class of vehicles defined in §17A-10-1 of this code:
58 Class A, Class B, Class G, Class H, Class T, Class V, Class X, and all-terrain vehicles and utility
59 terrain vehicles as defined in §20-15-2 of this code.

60 (6) "Person" means and includes an individual, a trust, estate, partnership, pass through
61 entity, association, company, or corporation.

§11-13MM-3. Eligibility for tax credits; creation of the credit.

1 There shall be allowed to every eligible taxpayer a credit, as determined under this article,
2 against the tax imposed under §11-21-1 et seq. of this code, or against the tax imposed under §11-
3 24-1 et seq. of this code, as applicable.

§11-13MM-4. Amount of credit allowed.

1 (a) Credit allowed. -- Eligible taxpayers shall be allowed a credit against the tax imposed
2 under §11-21-1 et seq. of this code, or against the tax imposed under §11-24-1 et seq. of this code,
3 as applicable, the application of which credit and the amount of which credit shall be determined
4 as provided in this article.

5 (b) Amount of credit. – The amount of credit allowed under this article to the eligible
6 taxpayer is the amount of West Virginia ad valorem property tax timely paid during the personal
7 income taxable year or the corporation net income tax taxable year, as applicable, to a county
8 sheriff on the value of a motor vehicle owned by the eligible taxpayer: *Provided*, That in no case
9 shall any credit be allowed under this article for any untimely ad valorem property tax paid, or any
10 payment of delinquent ad valorem property tax, or payment of “back tax” ad valorem property
11 taxes.

§11-13MM-5. Application of annual credit allowance.

1 (a) Application of credit against personal income tax and corporation net income tax. –

2 (1) Personal income tax – If the eligible taxpayer is subject to the personal income tax
3 imposed by §11-21-1 et seq. of this code, the amount of credit allowed shall be taken against the
4 personal income tax liability of the eligible taxpayer for the current personal income tax taxable
5 year.

6 (2) Corporation net income tax -- If the eligible taxpayer is subject to the corporation net
7 income tax imposed by §11-24-1 et seq. of this code, the amount of credit allowed shall be taken
8 against the corporation net income tax liability of the eligible taxpayer for the current corporation
9 net income tax taxable year.

10 (b) Refundable portion of annual credit allowance. -- If annual tax credit allowed under this
11 article exceeds the amount of personal income tax or corporation net income tax, as applicable,
12 subject to offset under this article in any taxable year, the eligible taxpayer may claim, for that
13 taxable year, the excess amount as a refundable tax credit.

14 (c) Transfer or sale of the motor vehicle —

15 (1) Where there is a sale or transfer of the motor vehicle from an eligible taxpayer to any
16 other person or entity, the transferor retains entitlement to the tax credit authorized under this
17 article for the timely paid *ad valorem* property tax paid by the transferor in the transferor's personal
18 income tax taxable year or corporation net income tax taxable year, as applicable, on the
19 transferred motor vehicle.

20 (2) If the transferee meets all requirements for qualification as an eligible taxpayer under
21 this article and meets all requirements for entitlement to the tax credit authorized under this article,
22 then the transferee shall be entitled to the tax credit authorized under this article for the timely paid
23 *ad valorem* property tax paid by the transferee in the transferee's personal income tax taxable year
24 or corporation net income tax taxable year, as applicable on the eligible motor vehicle.

25 (3) In no case shall the transferor and the transferee take the tax credit authorized under
26 this article for the same taxable year.

27 (d) Annual schedule. -- For purposes of asserting the credit against tax, the taxpayer shall
28 prepare and file an annual schedule showing the amount of personal income tax paid for the
29 taxable year, and the amount of property tax paid on the motor vehicle for the taxable year, and the
30 amount of credit allowed under this article. The annual schedule shall set forth the information and
31 be in the form prescribed by the Tax Commissioner.

§11-13MM-6. Effective date.

1 This article shall be effective for personal income taxable years beginning on or after
2 January 1, 2022, and for corporation net income tax taxable years beginning on or after January 1,
3 2022. This article is specifically retroactive to such date. *Ad valorem* property tax timely paid in the

- 4 personal income tax taxable year, or the corporation net income tax taxable year, as applicable,
- 5 beginning on or after January 1, 2022, on any motor vehicle as herein defined, may qualify for the
- 6 tax credit specified in this article.

NOTE: The purpose of this bill is to authorize a tax credit against the personal income tax, or the corporation net income tax, as applicable, in the amount of ad valorem property tax timely paid during the income tax taxable year on specified motor vehicles. Specified motor vehicles are limited to Class A, Class B, Class G, Class H, Class T, Class V, and Class X motor vehicles, all-terrain vehicles and utility terrain vehicles. Tax credit is retroactive to taxable years beginning on and after January 1, 2022, and is refundable. See motor vehicle classes:

A	Cars & Trucks	Passenger cars & trucks with a gross weight of 10,000 pounds or less
B	Trucks	Trucks, truck tractors, or road tractors with a gross weight of 10,001 pounds or more
G	Motorcycles (3 wheels or less)	Every motorcycle including; motor driven cycles mopeds, having saddle, & no more than 3 wheels
H	Buses	Every motor vehicle designed for carrying more than 7 passengers or transportation of persons for compensation, excluding taxicabs
T	Trailers	Trailers, boat trailers, or semitrailers of a type designed to be drawn by A vehicles with a gross weight of less than 2,000 pounds
V	Antique Motor Vehicles	Antique motor vehicles are at least 25 years old
X	Farm Trucks	Used exclusively for the transportation of farm products & supplies by a farmer

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.